

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BRANDON R. PALMER,

Appellant.

No. 32668-0-II

UNPUBLISHED OPINION

Armstrong, J. – Brandon Palmer appeals his juvenile adjudication of guilt for misdemeanor third degree malicious mischief, arguing the State presented insufficient evidence that he physically damaged any property. We disagree and affirm.

Facts

Palmer and several other juveniles were playing with gas by squirting it on the ground and then setting it on fire. Palmer admitted squirting an “X” of gas into already flaming pavement, which caused the flames to climb into the bottle until Palmer managed to extinguish them. Report of Proceedings (RP) at 11-12. This particular fire caused scorch marks on the pavement and a wall at a high school.

The school principal testified that the fire damage was “cosmetic” rather than structural. RP at 7. The principal specifically testified that the school decided not to repair the “char marks” on the pavement because they would eventually wear off. RP at 7.

The State charged Palmer with gross misdemeanor third degree malicious mischief under RCW 9A.48.090(1)(a) and (2)(a) for causing physical damage of more than \$50 to the property of the high school. The trial court found Palmer guilty only of misdemeanor third degree

malicious mischief based on his admission of adding the “X” to the fire. RP at 27. The trial court imposed a standard range disposition. Palmer appeals.

Analysis

Palmer challenges the sufficiency of the trial evidence to establish that he caused physical damage to the pavement, noting that the only testimony was that the fire caused scorch marks resulting in no repair costs. Although phrased as a challenge to the sufficiency of the evidence, Palmer’s real claim is that the malicious mischief statute does not include such marks within the definition of “physical damage.” Br. of Appellant at 4. Palmer does not dispute that the evidence supports a finding that he set or contributed to at least one pavement fire, which led to scorch or char marks.

The State charged Palmer under RCW 9A.48.090(1)(a), which requires proof that he caused “physical damage” to property.¹ Subsection two of that statute states that when the amount of damage exceeds \$50, the crime is a gross misdemeanor; when the damage “is fifty dollars or less,” the crime is a simple misdemeanor. RCW 9A.48.090(2)(a), (b).

The legislature has provided that “in addition to its ordinary meaning,” physical damage “includes any diminution in the value of any property as the consequence of the act.” RCW 9A.48.100(1). The level of physical damage can also be established by proof of the “reasonable cost of repairs” to return the damaged property to “its former condition.” *State v. Gilbert*, 79 Wn. App. 383, 385, 902 P.2d 182 (1995). But while conviction of third degree malicious

¹ Because the State did not charge under RCW 9A.48.090(1)(b), prohibiting the writing, painting, or drawing of “any inscription, figure, or mark,” our opinion does not address that subsection.

mischievous, a gross misdemeanor, requires the State to prove a specific dollar amount of damage (more than \$50), the State is not required to prove any dollar amount of damage to convict a defendant of misdemeanor third degree malicious mischief. *Compare* RCW 9A.48.090(2)(a) *with* RCW 9A.48.090(1)(a), *and* (2)(b). *Any* amount of physical damage less than \$50, even if the value is unspecified, is sufficient to prove the simple misdemeanor.

While the school incurred no repair costs to remove the scorch marks caused by Palmer, such a mark still diminishes the value of the school's property. Pavement or walls marred by scorch marks reduce the value of both those items and of the entire premises even if such marks do not affect the structure or use of the surface. A school yard without such marks has a higher value than one with them. Palmer caused physical damage to the pavement under the "diminution in the value" prong of the physical damage definition. RCW 9A.48.100(1). Although the physical damage here is minimal, it is sufficient to support Palmer's conviction.

Adjudication of guilt affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Houghton, P.J.

Penoyar, J.